

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.14072 of 2017 (O&M)
Date of Decision : 02.07.2019.

Rakesh Kumar

...Petitioner

Versus

State of Haryana and others

....Respondents

Coram : Hon'ble Mr. Justice B.S.Walia

Present: Mr. Nitin Jain, Advocate for the petitioner.

Mr. Gaurav Jindal, Addl. AG, Haryana.

Mr. Ajay Pal Singh, Advocate for
Mr. Kanwal Goyal, Advocate for respondent No.3.

B.S.WALIA, J. (Oral)

CM No.16054-CWP of 2018

Allowed as prayed for.

CWP No.14072 of 2017

1. Civil Writ Petition has been filed for the issuance of a writ of Mandamus, Certiorari or any other suitable writ, direction or order for quashing the rejection list and letter dated 05.05.2017 (Annexure P/5 and P/6) as well as communications dated 24.05.2017 and 07.06.2017 (Annexure P/8 and P/10), consequentially the result and communications vide which the candidature of the petitioner was rejected for the post of Assistant Professor (College Cadre) under DESM category on the ground that his income was more than ₹6,000/- per month,

2. At the time of motion hearing, the Coordinate Bench took into account that the certificate submitted by the petitioner along with his application form showing his salary to be ₹20,000/- per month as Assistant Professor, Commerce was given by mistake by the College and that in fact the subsequent clarification dated 08.04.2017 (Page No.48) of the writ petition was issued certifying that salary of the petitioner was only ₹5,000/- per month. While issuing notice of motion, it was directed that an inquiry be got conducted by the District Education Officer, Mohindergarh regarding the monthly salary being paid by the Sanskar Bharti Degree College for Women Pali, Mohindergarh to the petitioner, after taking into consideration the record of the college as to the amount of remuneration the petitioner had been getting and submit a report accordingly. It was further observed that in case it was found that the petitioner had not given a true picture regarding his salary, the petition would be dismissed with exemplary costs, apart from initiating criminal proceedings against the petitioner. Further the petitioner was provisionally allowed to be interviewed subject to the final decision of the writ petition with a direction that his result would not be declared till further orders.

3. Pursuant to the order of this Court dated 03.07.2017, an inquiry was conducted in the matter by Mr. Mukesh Kumar Lawania, District Education Officer, Mohindergarh at Narnaul and copy of the report is attached with the reply. A perusal of the affidavit as well as inquiry report reveals that on the basis of inquiry conducted by the District Education Officer, it had been found that the salary drawn by the petitioner was maximum to ₹5500/- per month during the period August, 2005 to

April, 2017 and that during the said period for majority of the months, the salary drawn by the petitioner was Rs.5,000/- per month. Although the affidavit and report was filed by respondent No.4 in May 2018, no counter has been filed to the same by respondent No.3.

4. Respondent No.3/Haryana Public Service Commission, on the other hand, has taken up the stand that the petitioner had submitted a certificate issued by the College, where he was working certifying the petitioner to be drawing salary of ₹20,000/- per month and the certificates subsequently submitted by the petitioner (Page No.48) of the paperbook was submitted after last date for receipt of application on 08.04.2017.

5. In response thereto, learned counsel for the petitioner contends that the written examination was conducted on 05.02.2017 and result thereof was declared on 17.03.2017, where after interview for the post of Assistant Professor was scheduled for 17.05.2017 to 08.06.2017, whereas the certificate reflecting the correct monthly salary dated 08.04.2017 was submitted by the petitioner to the Commission on 11.05.2017 as is evident from Annexure P/7 i.e. much prior to the date fixed for conduct of interview. No doubt the petitioner was aware of the salary he was drawing while teaching in the college and the certificate Annexure P/2 (Page No.33 of the paperbook) reflecting the salary of the petitioner as ₹20,000/- per month ought to have been got corrected by the petitioner and the correct certificate placed on record. However, the fact remains that the inquiry conducted by the District Education Officer categorically mentions that the petitioner was drawing salary of ₹5,000/- per month from August, 2015 to April, 2017 and that for few months he had been paid ₹5200/- and ₹5500/-.

The inquiry report which is based on the record perused by the District Education Officer corroborates the certificate Annexure P/7 dated 08.04.2017. The certificate dated 08.04.2017 clearly certifies the factual position as was existing up to the cut of date for submitting applications.

6. In the circumstances, rejection of the petitioner's candidature under DESM category on the ground that he was having income of more than ₹6,000/- has been passed by the Commission without taking into account the certificate dated 08.04.2017 (Annexure P/7) received by the Commission on 11.05.2017. Once it is the admitted position that no counter has been filed to the report of the District Education Officer that the salary of the petitioner was ₹5,000/- per month i.e. less than Rs.6,000/- per month, order treating the petitioner ineligible as dependent of DESM is legally unsustainable and is accordingly set aside. Accordingly, impugned letter dated 24.05.2017 (Annexure P/8) is set aside and the respondents are directed to reconsider the claim of the petitioner as per merit for appointment to the post of Assistant Professor (College Cadre) under DESM category in accordance with law.

7. Writ petition allowed in aforementioned terms.

(B.S.WALIA)
JUDGE

02.07.2019

rajesh.k.khurana

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No